TESTIMONY OF ATTORNEY SHARON WICKS DORNFELD
JOINT COMMITTEE ON THE JUDICIARY
31 MARCH 2014
SUPPORT R.B. 494,with modifications
AN ACT CONCERNING GUARDIANS AD LITEM AND ATTORNEYS FOR MINOR CHILDREN IN FAMILY RELATIONS MATTERS.

To the Hon. Eric Coleman, co-chair, the Hon. Gerry Fox, co-chair, the Hon. Paul Doyle, vice chair, the Hon. Matthew Ritter, vice chair, the Hon. John Kissel, ranking member, the Hon. Rosa Rebimbas, ranking member, and members of the Judiciary Committee:

I had the honor to serve, together with Attorney Sue A. Cousineau, as co-chair of the Task Force to Study Legal Disputes Involving the Care and Custody of Minor Children. I am also an attorney in private practice in Danbury, and for the last 25 years have limited my practice to representing children as their attorney or Guardian *ad litem*.

There were three specific charges to the Task Force and we were also asked to consider the costs associated with contested custody actions. Our membership was comprised of legislators, individuals who have personal and other experience with contested custody matters, mental health professionals, and family law attorneys. There were widely divergent views and spirited discussion. All members agreed, whatever the individual perspective, that there are many ways to improve the process. Our final report, I am proud to say, presented 68 recommendations for improvement, of which 38 received unanimous support.

This bill addresses only the first of our charges: "to study the role of a guardian ad litem and the attorney for a minor child in any action involving parenting responsibilities and the custody and care of a child," together with costs attributed to GALs and AMCs.

For those unfamiliar with the process, the custody of children becomes an issue when parents are divorcing or when never-married parents ask the court to resolve a dispute about their children's care or support. The vast majority of all of those cases–well over 90%-- are resolved because the parents are able to agree between themselves, with the guidance of their own attorneys if available, with the assistance of the Judicial Branch Family Services offices, and/or with the assistance of non-profit agencies or private mental health professionals and mediation. Mental health professionals and experienced family law attorneys also provide free mediation services on a volunteer basis through the Early Intervention Program, as Special Masters, and on free advice days in many judicial districts, all to encourage agreements on custody matters.

A small percentage of cases remain in which there is a higher level of conflict between the parents. In those cases, as the United States Supreme Court has observed, "Unfortunately, experience has shown that the question of custody, so vital to a child's happiness and wellbeing, frequently cannot be left to the discretion of parents. This is particularly true where, as here, the

estrangement of husband and wife beclouds parental judgment with emotion and prejudice." [1]

Those higher-conflict cases require a higher level of services and court involvement in order to ensure that the children's best interests are being identified, protected, and promoted. In most cases, a Guardian *ad litem* or Attorney for Minor Child is appointed by the Court. While such an appointment is typically made because one or both parents request it, a Judge may also decide that the specific factual circumstances warrant representation for the child. Where the parents make the request, they commonly also request that a particular individual be appointed. While there are differences in the roles of Guardians *ad litem* and Attorneys for Minor Children, both are ultimately responsible to ensure that the children are being protected. It is important to note that the statutes governing the appointment of either specifically require that the Court deems the appointment to be in the best interests of the child. Our Practice Book rules also require that all AMCs and GALs have completed at least 30 hours of specialized training.

Where parents are indigent, a GAL or AMC is provided at State expense and at no cost to the parents. The Office of Chief Public Defender contracts with persons, usually attorneys, who make themselves available to serve in those cases at a very low hourly rate. In some judicial districts, the State contracts with a non-profit organization, the Children's Law Center, to provide GALs and AMCs as well as other services to low-income parents. In the remaining cases, our statutes provide that the parents will share the expense of the AMC or GAL, just as they pay all other expenses for services provided to their children. As parents' own attorneys charge by the hour, AMCs and GALs in private practice typically also charge by the hour.

With that background, R.B. 494 incorporates a number of the recommendations made by the Task Force, and we are grateful for their incorporation in this Bill. In particular, Section 1(c) would provide that case-specific duties be assigned to the AMC or GAL, and that the appointment order define the term of the appointment, specify the hourly rate to be charged, apportion the retainer between the parents, and provide for regular reports back to the court to review the progress of the work and the expense incurred to date. Standardizing those procedures would be beneficial in all cases.

Our current case law makes it very difficult for a parent to raise concerns about an AMC or GAL's performance. Section 4 of the bill would provide a mechanism for a parent to raise concerns that the AMC or GAL is not performing appropriately. Our Task Force recognized that parents should be able to raise legitimate complaints, but also that one parent in every case is likely to view the AMC or GAL as unsupportive and would like him or her removed. For that reason, I both support this section and believe that revisions should be made which would limit the frequency of filing such motions to avoid repetitive attempts to remove an AMC or GAL.

Section 5 (b) relates to the payment of fees to GALs and AMCs. While the Task Force did not specifically make a recommendation regarding the preservation of children's college accounts,

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[1] Ford v. Ford, 371 U.S. 187, 193 (1962)

preserving those accounts for the benefit of the children is entirely consistent with their best interests and I believe that all members of the Task Force would support this provision. I would note, however, that cases frequently involve accounts titled in the parents' own names and social security numbers which one parent or the other claims were intended as college savings for the children. Those accounts remain available to the parents to use without restriction for their own purposes, and are treated as all other marital assets in divorce cases. In order to be certain that legitimate funds are, in fact, preserved for a child's benefit, I believe that the definition of "college savings account" should be limited to §529 accounts, UTMA, and UGMA accounts specifically established for the benefit of a child.

This bill also includes provisions which were considered by the Task Force but did not receive the support of a majority of the members.

Section 1(a) would require the court to provide a list of five AMC or GAL candidates from which parents would choose if they do not otherwise request a specific individual. In most cases, judges and lawyers (where parents have lawyers) are familiar with the AMCs or GALs practicing in the area and their level of experience, particular areas of expertise, and track record, and are able to recommend persons who might be a good match for the issues. Where there are no lawyers involved, parents would essentially be choosing a name at random. My concern would be even greater if the court were simply to provide the next five names from the list of 1300 persons who, while eligible for appointment, may never have set foot in a courtroom. Children deserve representation by someone knowledgeable about the law and procedure.

Especially difficult issues (e.g. domestic violence, substance abuse, mental health issues, allegations of sexual abuse, relocation) require that the child's representative have a high level of experience and expertise, and even more when the parents are unrepresented. The process envisioned in Section 1(a) may prove to be a disadvantage the child. As the child's welfare is the entire point of the custody proceeding, the child is entitled to the best representation available.

Section 5(c) was also considered and rejected by the majority of the Task Force. While the members of the Task Force were highly sensitive to the financial burdens faced by parents in custody disputes, the majority felt that those burdens must be seen in context. First, multiple resources are made available to parents to assist them in reaching an agreement, often at no cost to the parents. Most parents do agree. Cases in which parents do not agree will necessarily consume more time and cost more. Cases in which the parents choose to continue the conflict for years will cost even more. Second, the attorneys and licensed mental health professionals who serve as GALs and AMCs are professionals with advanced educational degrees obtained at great expense. Their knowledge and skill set is used when representing children as well as when representing adults. Most have their own private practices with all of the usual challenges of running a business in addition to their professional obligations. They are entitled to be paid for their professional services, just as the parents' own attorneys are entitled to be paid. Third, parents will either agree on how they will pay the GAL and AMC fees or a court must find that a fee request is reasonable based on all the circumstances and will allocate the obligation between

the parents based on the financial circumstances of each. The order to pay then enters. A parent is not found in contempt of that order unless it is proven to the Court that the parent had the ability to pay but willfully disobeyed the order. Having said all that, many GALs and AMCs routinely discount their bills, agree to extended payment schedules, and don't charge for short phone calls, emails, etc. Finally, and significantly, no parent would agree to work for a certain amount and then, when the work is completed, accept an undetermined lesser amount. GALs and AMCs shouldn't be expected to either.

This bill contains many positive provisions. I hope that additional revisions might be made which would improve it, all to the benefit of the parents involved in these cases and most especially their children.

Sharon Wilcox Dornfeld